State (#11) 23701 (D)

Cal Jur 3d (Rev) Corporations § 603.
Review of Selected 1985 Legislation. 17 Pacific LJ 616.

ARTICLE 3

Standards of Conduct

Collateral References:
Witkin Summary (9th ed) Corporations § 362.
Cal Jur 3d (Rev) Corporations §§ 606, 611.
State statutes governing directors of charitable corporations. 18 USF LR 749.

§ 5230. Duties and liabilities of directors of nonprofit public benefit corporation

(a) Any duties and liabilities set forth in this article shall apply without regard to whether a director is compensated by the corporation.

(b) Part 4 (commencing with Section 16000) of Division 9 of the Probate Code does not apply to the directors of any corporation.

Amended Stats 1987 ch 923 § 1.2.

Amendments:
1987 Amendment: Substituted subd ((b) for former subd (b) which read: "(b) Article 2 (commencing with Section 2228) of Chapter 1 and Article 2 (commencing with Section 2258) of Chapter 2 of Title 8 of Part 4 of Division 3 of the Civil Code shall not apply to the directors of any corporation".

Law Revision Commission Comments:
1987—Subdivision (b) of Section 5230 is revised to correct a cross-reference.

Collateral References:
Review of Selected 1987 Legislation. 19 Pacific LJ 439.

§ 5231. Director to perform duties in good faith; Good faith reliance on official corporate information, opinions, and records; Liability of directors

Collateral References:
Witkin Summary (9th ed) Corporations § 356, 363, 369.
Cal Jur 3d (Rev) Corporations § 606.
Governance of non-profit organizations: An appropriate standard of conduct for trustees of museums and other cultural institutions. 85 Dickinson LR 607.
Review of Selected 1979 California Legislation. 11 Pacific LJ 307.

NOTES OF DECISIONS

The individual initial directors of an association of townhouse owners, comprised of the owners of the development company and its employees, were strictly liable to the association for breach of the basic fiduciary duties of acting in good faith and exercising basic duties of good management (Corp. Code, § 5231; former § 820), where the original directors admittedly failed to exercise their supervisory and managerial responsibilities to assess each unit for an adequate reserve fund and acted with a conflict of interest. The failure of the initial association directors to exercise supervision, so as to permit mismanagement or nonmanagement, was an independent ground for the breach of fiduciary duty by the developer during the initial period of the association, during which time the association was controlled by the developer and its employees. Reven's Cove Townhomes, Inc. v Knuppe Development Co. (1981) 114 CA3d 783, 171 Cal Rptr 334.

§ 5231.5. [Section repealed 1990.]
Added Stats 1986 ch 720 § 1. Repealed Stats 1990 ch 107 § 3 (AB 2292). See § 5239.

Collateral References:
Witkin Summary (9th ed) Corporations § 369, 439.
Review of Selected 1986 Legislation. 18 Pacific LJ 479.
1986 legislative changes affecting California nonprofit corporations. 21 USF LR 831.

§ 5233. Self-dealing transaction by interested director; Remedies

(a) Except as provided in subdivision (b), for the purpose of this section, a self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest and which does not meet the requirements of paragraph (1), (2), or (3) of subdivision (d). Such a director is an "interested director" for the purpose of this section.

(b) The provisions of this section do not apply to any of the following:

(1) An action of the board fixing the compensation of a director as a director or officer of the corporation.

(2) A transaction which is part of a public or charitable program of the corporation if it: (i) is approved or authorized by the corporation in good faith and without unjustified favoritism; and (ii) results in a benefit to one or more directors or their families because they are in the class of persons intended to be benefited by the public or charitable program.

(3) A transaction, of which the interested director or directors have no actual knowledge, and which does not exceed the lesser of 1 percent of the gross receipts of the corporation for the preceding fiscal year or one hundred thousand dollars ($100,000).

(c) The Attorney General or, if the Attorney General is joined as an indispensable party, any of the following may bring an action in the superior court of the proper county for the remedies specified in subdivision (h):

(1) The corporation, or a member asserting the right in the name of the corporation pursuant to Section 5710.

(2) A director of the corporation.

(3) An officer of the corporation.

(4) Any person granted relator status by the Attorney General.

(d) In any action brought under subdivision (c) the remedies specified in subdivision (h) shall not be granted if:

(1) The Attorney General, or the court in an action in which the Attorney General is an indispensable party, has approved the transaction before or after it was consummated; or

(2) The following facts are established:

(A) The corporation entered into the transaction for its own benefit;

(B) The transaction was fair and reasonable as to the corporation at the time the corporation entered into the transaction;

(C) Prior to consummating the transaction or any part thereof the board authorized or approved the transaction in good faith by a vote of a majority of the directors then in office without counting the vote of the interested director or directors, and with knowledge of the material facts concerning the transaction and the director's interest in the transaction. Except as provided in paragraph (3) of this subdivision, action by a committee of the board shall not satisfy this paragraph; and

(D) (i) Prior to authorizing or approving the transaction the board considered and in good faith determined after reasonable investigation under the circumstances that the corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances or (ii) the corporation in fact could not have obtained a more advantageous arrangement with reasonable effort under the circumstances; or

(3) The following facts are established:

(A) A committee or person authorized by the board approved the transaction in a manner consistent with the standards set forth in paragraph (2) of this subdivision;

(B) It was not reasonably practicable to obtain approval of the board prior to entering into the transaction; and

(C) The board, after determining in good faith that the conditions of subparagraphs (A) and (B) of this paragraph were satisfied, ratified the transaction at its next meeting by a vote of the majority of the directors then in office without counting the vote of the interested director or directors.

(e) Except as provided in subdivision (f), an action under subdivision (c) must be filed within two years after written notice setting forth the material facts of the transaction and the director's interest in the transaction is filed with the Attorney General in accordance with such regulations, if any, as the Attorney General may adopt or, if no such notice is filed, within three years after the transaction occurred, except for the Attorney General, who shall have 10 years after the transaction occurred within which to file an action.

(f) In any action for breach of an obligation of the corporation owed to an interested director, where the obligation arises from a self-dealing transaction which has not been approved as provided in subdivision (d), the court may, by way of offset only, make any order authorized by subdivision (h), notwithstanding the expiration of the applicable period specified in subdivision (e).

(g) Interested directors may be counted in determining the presence of a quorum at a meeting of the board which authorizes, approves or ratifies a contract or transaction.

(h) If a self-dealing transaction has taken place, the interested director or directors shall do such things and pay such damages as in the discretion of the court will provide an equitable and fair remedy to the corporation, taking into account any benefit received by the corporation and whether the interested director or directors acted in good faith and with intent to further the best interest of the corporation. Without limiting the generality of the foregoing, the court may order the director to do any or all of the following:

(1) Account for any profits made from such transaction, and pay them to the corporation;

(2) Pay the corporation the value of the use of any of its property used in such transaction; and

(3) Return or replace any property lost to the corporation as a result of such transaction, together with any income or appreciation lost to the corporation by reason of such transaction, or account for any proceeds of sale of suchproperty, and pay the proceeds to the corporation together with interest at the legal rate. The court may award prejudgment interest to the extent allowed in Section 3287 or 3288 of the Civil Code. In addition, the court may, in its discretion, grant exemplary damages for a fraudulent or malicious violation of this section.

Amended Stats 1980 ch 1155 § 4; Stats 1981 ch 587 § 7.

Amendments:

1980 Amendment: (1) Added "and which does not meet the requirements of paragraph (1), (2), or (3) of subdivision (d)" at the end of the first sentence of subd (a); (2) substituted the introductory clauses of subds (d)(2) and (d)(3) for the former introductory clauses of subds (d)(2) and (d)(3); and (3) substituted "within three years after the transaction occurred, except for the Attorney General, who shall have 10 years after the transaction occurred within which to file an action" for "10 years after the cause of action has accrued" in subd (e).

1981 Amendment: (1) Added "(i)" and "(ii)" in subd (d)(2)(D); and (2) deleted "which has not been approved as provided in subdivision (d)" after "If a self-dealing transaction" at the beginning of subd (h).

Cross References:

Personal liability of volunteer director or officer of nonprofit corporation: Corp C § 5239.

Collateral References:

Witkin Summary (9th ed) Corporations § 353-365, 369, 371, Torts § 36.

Cal Jur 3d (Rev) Corporations § 607.